

form within one year from the date VA provided it, VA will consider the claim to have been filed on the date VA received the informal claim.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(c) *Enrollment is not an informal claim.* The act of enrolling in an approved school does not in itself constitute an informal claim.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 2900–0154)

§ 21.7532 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal, and to reopened claims.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(b) *Failure to complete claim.* VA will consider a claim to be abandoned when VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year of the date of the request. After the expiration of one year, VA will not take further action unless a new claim is received.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(c) *New Claim.* When a claim has been abandoned, VA will consider any subsequent communication which meets the requirements of an informal claim to be a new claim. VA will consider the date of receipt of the subsequent communication to be the date of the new claim.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(d) *Failure to furnish form or notice of time limit.* Failure by VA to furnish the reservist any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471; Pub. L. 98–525)

(e) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.7551 of this part must be received by VA by the later of the following dates:

(1) One year from the date on which the reservist's original period of eligibility ended.

(2) One year from the last date on which the reservist's physical or mental disability ceased to prevent him or her from beginning or resuming the reservist's chosen program of education.

(Authority: 10 U.S.C. 16133(b)(2); Pub. L. 98–525)

(f) *Time limits for perfecting a claim.* Time limits within which reservists are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. When an extension is requested after expiration of a time limit, the action required of the reservist must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3431, 5101, 5113)

[53 FR 34740, Sept. 8, 1988, as amended at 58 FR 51781, Oct. 5, 1993]

ELIGIBILITY

§ 21.7540 Eligibility for educational assistance.

(a) *Basic eligibility requirements.* The Armed Forces will determine whether a reservist is eligible to receive benefits pursuant to 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994). To be eligible a reservist—

(1) Shall:

(i) Enlist, reenlist, or extend an enlistment as a Reserve for service in the Selected Reserve so that the total period of obligated service is at least six years from the date of such enlistment, reenlistment, or extension; or

(ii) Be appointed as, or be serving as, a reserve officer and agree to serve in

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the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject;

(2) Must complete his or her initial period of active duty for training;

(3) Must be participating satisfactorily in the Selected Reserve; and

(4) Must not have elected to have his or her service in the Selected Reserve credited toward establishing eligibility to benefits provided under 38 U.S.C. chapter 30.

(Authority: 10 U.S.C. 2132; 38 U.S.C. 3033(c); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; sec. 4, Pub. L. 100-48, 101 Stat. 331; secs. 643, 645, Pub. L. 101-189, 103 Stat. 1458)

(b) *Eligibility requirements for expanded benefits.* (1) A reservist shall be eligible to pursue all types of training described in subpart L of this part regardless of whether he or she has received a baccalaureate degree or equivalent evidence of completion of study if—

(i) After September 30, 1990, he or she takes one of the actions described in paragraph (a)(1)(i) or (a)(1)(ii) of this section;

(ii) The reservist meets the criteria of paragraphs (a)(2) through (a)(4) of this section; and

(iii) The reservist does not have his or her eligibility limited as described in paragraph (c) of this section.

(2) A reservist shall be eligible to pursue all types of training described in subpart L of this part except the training described in paragraph (b)(3) of this section if—

(i) After June 30, 1985, but not after September 30, 1990, he or she takes one of the actions described in paragraph (a)(1) or (a)(2) of this section;

(ii) The reservist has not received a baccalaureate degree or the equivalent evidence of completion of study;

(iii) The reservist meets all the other eligibility criteria of paragraph (a) of this section; and

(iv) The reservist does not have his or her eligibility limited by paragraph (c) of this section.

(3) The types of training which a reservist described in paragraph (b)(1) of this section may pursue, but which may not be pursued by a reservist described in paragraph (b)(2), are:

(i) A course which is offered by an educational institution which is not an institution of higher learning (to determine if a nursing course is offered by an institution of higher learning, see § 21.7622(f));

(ii) A correspondence course;

(iii) A program of education leading to a standard college degree offered solely by independent study (but see § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);

(iv) A refresher, remedial or deficiency course;

(v) A cooperative course;

(vi) An apprenticeship or other on-job training; and

(vii) A flight course.

(Authority: 10 U.S.C. 2131, 2132, 2136; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; secs. 642, 643, 645, Pub. L. 101-189, 103 Stat. 1456-1458)

(c) *Limitations on establishing eligibility.* (1) An individual must elect whether or not he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when—

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 3012, and has established eligibility to that assistance partially through service in the Selected Reserve; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 3012 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505 followed by service in the Selected Reserve.

(2) A reservist may revoke his or her election provided he or she has not negotiated a check for benefits under either 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 after the date of the election. Once the reservist has negotiated a check under either chapter, the election is irrevocable.

(Authority: 38 U.S.C. 3033(c), 10 U.S.C. 16132; Pub. L. 98-525, Pub. L. 99-576)

(d) *Dual eligibility.* An individual who has established eligibility for basic educational assistance under 38 U.S.C.

chapter 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. chapter 1606 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 16132(d), 16134; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 57 FR 57106, Dec. 3, 1992; 61 FR 20729, May 8, 1996; 61 FR 29301, June 10, 1996]

§ 21.7550 Ending dates of eligibility.

(a) *Time limit on eligibility.* Except as provided in § 21.7551 and paragraphs (a)(3), (b), (c), and (d) of this section, a reservist's period of eligibility expires effective the earlier of the following dates:

(1) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or

(2) The date the reservist is separated from the Selected Reserve.

(Authority: 10 U.S.C. 16133; Pub. L. 100–689)

(3) If, during the Persian Gulf War, the reservist serves on active duty pursuant to an order to active duty issued under 10 U.S.C. 672 (a), (d), or (g), 673 or 673b, the period of this active duty service plus four months shall not be considered in determining the time limit on eligibility found in paragraphs (a)(1) and (a)(2) of this section.

(Authority: 10 U.S.C. 16133; Pub. L. 98–525, Pub. L. 102–127) (Oct. 10, 1991).

(b) *Completion of term of program.* (1) If a reservist is enrolled in an educational institution regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire during a quarter or semester, the period of eligibility shall be extended to the end of the quarter or semester.

(2) If a reservist is enrolled in an educational institution not regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire after a major portion of the course is completed, the period of eligibility shall be extended until the earlier of the following occurs:

- (i) The end of the course, or
- (ii) 12 weeks from the date on which the reservist's eligibility otherwise would have expired.

(Authority: 10 U.S.C. 16133(b)(1); Pub. L. 98–525)

(c) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to educational assistance, the reservist's period of eligibility expires effective the last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance.

(Authority: 10 U.S.C. 16133(b); Pub. L. 100–689) (Nov. 18, 1988)

(d) *Unit deactivated.* (1) Except as provided in paragraph (d)(3) or (d)(4) of this section, the period of eligibility of a reservist, eligible for educational assistance under this subpart, who ceases to be a member of the Selected Reserve during the period beginning October 1, 1991, and ending September 30, 1999, under either of the conditions described in paragraph (d)(2) of this section, will expire on the date 10 years after the date the reservist becomes eligible for educational assistance.

(2) The conditions referred to in paragraph (d)(1) of this section for ceasing to be a member of the Selected Reserve are:

(i) The deactivation of the reservist's unit of assignment; and

(ii) The reservist's involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 10143(a).

(3) The provisions of paragraphs (d)(1) and (d)(2) of this section do not apply if the reservist ceases to be a member of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist ceases, under adverse conditions, to be a member of the Selected Reserve.

(4) A reservist's period of eligibility will expire if he or she is a member of a reserve component of the Armed Forces and (after having involuntarily